Supreme Court, U.S.
FILED
MAY 19 1987
JOSEPH F. SPANIOL, JR.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

HENRY ANDERSON, Appellant,

V.

DAVE FROHNMAYER,
WILLIAM F. GARY,
JAMES E. MOUNTAIN, jr.,
THOMAS H. DENNEY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF

APPEALS NINTH CIRCUIT

JURISDICTIONAL STATEMENT

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252
Appellant
(no phone)

PART I.

QUESTIONS PRESENTED BY THIS APPEAL

(1) Whether the Ninth Circuit Court of Appeals has authority to ignore binding precedential civil rights decisions of this United States Supreme Court?

(2) Whether the Ninth Circuit Court of Appeals has privilege to ignore the precedent set by this United States Supreme Court in KUSH v. RUTLEDGE, 103 S. Ct., 1483, cited by appellant on pages 24 & 27 of appellant's appeals brief?

(3) Whether the Ninth Circuit Court of Appeals can give priority to its rulings and ignore the Supreme Court decisions?

(4) Whether the United States Supreme Court is still the "SUPREME COURT" of the United States?

(5) Whether the Ninth Circuit Court of Appeals can deprive appellant of his U.S. Constitutional rights to FREEDOM OF SPEECH and FREEDOM OF PRESS by illegal judicial fiat?

(6) Is that misconduct in office or abuse of discretion for the Court of Appeals to breach its contract of employment with the U.S. and deliberately fail to use & abide by the precedential ruling of the U.S. Supreme Court in Kush v Rutledge cited in appellant's brief?

(7) Is that misconduct in office or abuse of discretion for the Appeals Court to deliberately misquote, misconstrue & misrepresent facts stated in appellant's Amended Complaint?

(8) Is that misconduct in office or abuse of discretion for the Appeals Court to accept & ratify the failure of defendant's to file a responsive pleading in the civil case?

(9) Is that misconduct in office or abuse of discretion for the District Court to breach its contract of employment with the United States & allow the defendant's to breach their sworn promises to obey the U.S. Constitution & the Federal Rules of Civil Procedure?

(10) What privilege do the four defendants

have, that allows them to deliberately fail to file a responsive pleading to this United States District Court action?

(11) What privilege does the District Court have that allows the Court to accept & ratify, the 4 defendant's failure to file an answer to this United States District Court action? (see page 8 of the argument)

(12) What law allows the Appeals Court to accept & ratify the breach of the 4 defendants contract of employment to use and obey the Federal Rules of Civil Procedure?

(13) What law allows the District Court to unjustifiably discriminate against appellant and allow the 4 defendant's to act contrary to their sworn promises to use and obey the Federal Rules of Civil Procedure?

PART II.

PARTIES TO THE PROCEEDING

A list of the parties involved in this case is set forth in the title of the case.

PART III.

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CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Article III, Sec 1. 5,D1,D3

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U.S. Constitution, XIV Amendment 8,9,D5

28 U.S.C. 1252, 28 U.S.C. 1331 1

Appendix A, C, D, have many references to Civil Rights Laws, 42 U.S.C. 1981 - 1986 thru out their pages, too many to cite individually

PART IV

JURISDICTION

This is a civil action with diversity of citizenship of parties. The amount in controversy exceeds the statutory minimum. The appeal statute is 28 U.S.C. Sec. 1252.

The case involves the federal question and arises under 28 U.S.C.A. Sec. 1331.

The Appeals Court has ignored its duty to use & abide by the decision of the Supreme Court in KUSH v. RUTLEDGE, 103 S. Ct. 1483, and was cited by appellant on pages 24 and 27 of appellant's appeals brief.

The appeals court has discriminated against appellant in its decision of Feb. 24, 1987, when the court ignored appellant's citing of KUSH, supra, which does not require racial or class-based discrimnatory animus, when the court used its own decision as the proper one to use.

The appeals court deliberately misstated facts in the case, in the first paragraph on page 2 of its MEMORANDUM, when it said,

in part ". . .filed the brief at the request. . ." Exhibit 5 of the appellant's appeals brief, contradicts that deliberate false claim of the appeals court.

In the third paragraph on page 2, the appeals court states, "racially-based animus must be alleged in the complaint. Appellant alleged class-based animus in his complaint & in his Appeals Brief, appellant cited KUSH, supra, which does not require racially-based animus.

In the fourth & last paragraph on page 2, the appeals court says in part, "(1) the defendants were acting under color of state law,". . . Appellant in his Amended Complaint, page 12, declares, in count VIII. DISCRIMINATION UNDER COLOR OF LAW, which count has a whole series of allegations of illegal acts being done under color of law.

In the second paragraph on page 4 of the appeals court MEMORANDUM, says in part,"the complaint must allege facts showing invidiously

discrimnatory class-based animus."

Appellant in his Amended Complaint, count 86 on pages 15 &16, alleged that the defendants used class based invidious animus to deprive appellant of his Constitutional rights.

All of the appeals court claims were by distorting the facts & omitting or ignoring the exhibits in the case.

The appeals court actions were done in bad faith by ignoring the evidence & the laws. Due to that bad faith prejudice of the court, the court could not realize it was acting in bad faith through its own self centered prejudice.

Appendix D4, herein, cites an "AVERAGE MAN TEST, which deals with bias of the judges, U.S. v. Haynes, C.A. Conn. 398 F.2d 980, 984.

Appendix D4, herein, cites "ABUSE OF POWER", Swenson v. Cahoon 111 Fla. 788, 152 So. 203, 204.

The Appeals Court falsely says that appellant's claims of bad faith by defendant's are only conclusory. The Federal Rules of Evidence forbid the 4 defendant's from denying their Oath of Office. In those Oaths of Office the 4 defendants swear to obey the U.S. Constitution and laws. Defendant's were all served with the U.S. District Court Process. The defendant's breached their legal duty under Federal Rules of Civil Procedure, to answer the Dist. Court's pleadings, which is obvious disrespect of the District Court & United States Constitution & laws, and deliberate evidence of bad faith.

The Appeals Court committed unjustifiable discrimination against appellant when it ignored those facts and FRCP requirements. The Appeals Court deprived appellant of his Fifth Amendment rights to Due Process of Law.

U.S. Dept of Agriculture v Moreno, 413 U.S. 528 (1973) While Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of Due Process.

PART V

ARGUMENT

The Court of Appeals judges have all had to take an Oath of Office to support & obey the United States Constitution & laws, as a part of their CONTRACT of EMPLOYMENT. The judges have no discretion to evade or avoid doing the acts specified in that Constitution.

U.S. Constitution Article III, Sec. 1, says "The judicial power of the United States shall be vested in one Supreme Court, . . ."

The Court of Appeals judges breached their contracts of employment when the judges fail-to to recognize the binding precedent ruling of the Supreme Court in Kush v. Rutledge cited by appellant on pages 24 & 27 of his Appeals Brief. When the Appeals Court Judges ignored that ruling, they showed & inflicted contempt on the Supreme Court.

The Appeals Court Judges, unjustifiably discriminated against appellant with their illegal action of citing the Appeals Court cases as being the dominant rulings.

The Appeals Court unjustifiably discriminated

against appellant & deliberately deprived appellant of his Constitutional Rights to FREEDOM of SPEECH with their arbitrary illegal memorandum.

The Appeals Court wrongfully stated that racial-based animus must be alleged in the action. Appellant acted on the ruling of the Supreme Court in Kush, supra which does not require racially based animus allegations. The Appeals Court thus deprived Appellant of his rights under 42 USC 1985.

The inclusion of Exhibits A,B,C, & D in appellant's Appeals Brief, was to provide documentary proof of what the status of the four defendant's was, I.E. state officials, and therefore their illegal acts were being done "under color of state law".

Oregon has no laws giving standards of meaning for the illegal custom & usage which the four defendants were using, to deprive Appellant of his U.S. Constitutional Rights.

Oregon has no laws giving standards of

application for the illegal custom & usage which the four defendant's were using under color of law to deprive Appellant of his United States Constitutional Rights, privileges and immunities.

Connaly v General Const. Co. 289 U.S. 385 (1926) The Court said, "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning & differ as to its application violates the first essentials of due process of law.

Grayned v Rockford 408 U.S. 104 (1972) it was ruled, "Not only does a vague statute run the risk of entrapping the innocent, it impermissibly delegates basic policy matters to policemen, judges & juries on an ad hoc & subjective basis, with the attendant dangers of arbitrary & discrimnatory application."

Flagg Bros. v Brooks (1978) 436 U.S. 149, "Involvement of state official may provide state action essential to show direct violation

of petitioner's Fourteenth Amendment rights, whether or not official's actions were officially authorized."

The act that the four defendants were trying to present to the Court, had no standards of meaning or application it was based upon custom & usage & impermissibly delegated basic policy matters to judges; see Grayned, supra, previous page.

The four defendant's brazenly tried to set themselves above the laws, and did not file an answer or any responsive pleading to the duly served complaint of plaintiff/appellant. They only filed a motion to dismiss.

A motion to dismiss is not a responsive pleading for purposes of Fed. Rules Civ. Pro. Rule 15(a) Brier v Northern Calif. Bowling Prop. Ass'n. 316 F.2d 787 (9th Cir. 1963).

U.S. v LEE 106 U.S. 220, 1 S. Ct. 261, "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impugnity. All

creatures of the government from the highest to the lowest, are creatures of the law and bound to obey it."

This section (42 USC 1983) was intended to enforce U.S. Constitutional Amendment XIV, Section 1, against state action whether that action be executive, legislative or judicial." Mitchum v Foster 92 S. Ct. 2151 (1972).

The Court of Appeals judges also acted as if they were above the law with their ignoring of the Supreme Court decision in KUSH, supra, and their misrepresenting the facts & then making a decision based on the false facts.

The 4 defendant's have never made any responsive pleading to the summons and are in deliberate default.

The District Court dismissed appellant's action with "prejudice" based upon that no responsive pleading of defendants, thereby showing that the District Court was only giving lip service to "RULE OF LAW" and in the process depriving plaintiff of due process of law.

In Marbury v Madison, 5 U.S. (1 Cranch) 137 (1803) Chief Justice Marshall said, "the essence of civil liberty" required a legal remedy for a legal wrong. Since the government of the United States is one "of laws and not of men" it must grant a remedy for violation of vested legal rights."

The illegal actions of the 4 defendants was a legal wrong & requires a legal remedy.

The actions of the Appeals Court Judges is also a legal wrong & requires a legal remedy.

The Court has continually held that "a fair trial in a fair tribunal is a basic requirement of due process." In re Murchison 349 U.S. 133, 136 (1965).

CONCLUSION

It is obvious that the Appeals Court did not act according to law, nor according to their contracts of employment, and their illegal arbitrary actions should be voided and that Appeals Court should be required

to act according to the United States Constitution and Laws.

The Appeals Court should be required to present the legal remedy for their legal wrong. The Appeals Court should be rebuked on its deliberate misrepresenting & misconstruing of the appellant's plainly written words and facts.

This Supreme Court should remind the Appeals Court, that the SUPREME COURT is still the Supreme Court of the United States.

The Appeals Court ruling should be vacated and the proceedings remanded to that court for the proper "legal remedy" for that Court's "legal wrong."

Henry Anderson

Henry Anderson/pro se
Appellant.

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

HENRY ANDERSON, Plaintiff, VS DAVE FROHNMAYER, WILLIAM F. GARY, JAMES E. MOUNTAIN, JR., THOMAS H. DENNEY, Defendants.	Civil No. 85-458LE ORDER F I L E D Oct. 15 5:50 PM 1985

Henry Anderson brought this action pro se against Dave Frohnmayer, the Oregon Attorney General, and assistant Attorneys General William Gary, James Mountain, Jr., and Thomas Denny. Anderson asserts claims under 42 U.S.C. Secs. 1981, 1982, 1983, 1985, and 1986, the United States Constitution, the Oregon Constitution, and Oregon law.

From the allegations of the complaint, the facts appear to be as follows. Anderson filed a writ of mandamus petition in the United States Supreme Court, directed at Chief Justice Edwin Peterson of the

Oregon Supreme Court. Justice Peterson sent a letter, dated October 5, 1984, to the clerk of the United States Supreme Court which stated, "In accordance with Supreme Court Rule 27.2(b) and Rule 21(b) of the Federal Rules of Appellate Procedure, I will make no appearance in response to the petition unless requested to do so by the court." Complaint, Exhibit 5.

Meanwhile, Anderson received a letter from the United States Supreme Court clerk's office saying that the clerk's office had not received the docket fee and that his petition was therefore being returned. Complaint, Exhibit 6. Anderson alleges that he had in fact sent the docket fee but that he was"getting tired of the phony excuses of the Clerk and his assistants." Complaint Para. 33, and so flew to Washington and gave $200 in cash to an assistant clerk; the clerk then sent Anderson a letter notifying him thst the case had been docketed.

Justice Peterson then wrote a letter to the

Solicitor General for Oregon. Justice Peterson enclosed copies of the papers Anderson had filed and concluded, "If some appearance needs to be made on my behalf, will you please attend to it." Complaint, Exhibit 17.

A brief in opposition to Anderson's petition for writ of mandamus was filed on Justice Peterson's behalf by defendants Frohnmayer, Gary, Mountain and Denney in their official capacities as Attorney General, Deputy Attorney General, Solicitor General and Assistant Attorney General. Anderson asserts that Justice Peterson's December 17, letter "is apparently the excuse the four defendants used to fabricate their phony 'Brief for Respondent in Opposition,' the key word being in the second short paragraph and is the word 'if'". Complaint para. 37. The complaint goes goes on to allege that the defendants, "breached their oaths of office & fabricated their illegal brief & sent it to the Supreme Court Clerk, for the purpose of hindering, impeding,

& obstructing the due course of justice in the Supreme Court, with intent to deny plaintiff/petitioner his rights to equal protection of the laws. . ." Complaint para 39. Anderson asserts, that when they filed the brief, the defendants breached their oaths of office and that the appearance of their printed names on the cover of the brief constituted perjury.

The complaint also alleges that the defendant, "conspired to inflict and did inflict severe mental and emotional distress upon plaintiff when defendants illegally intruded into plaintiff's civil case with their false fabricated Exhibit 18 (the brief), with intent to deny plaintiff equal protection of the laws, for lawfully enforcing or attempting to enforce his rights to equal protection of the laws,

Complaint para. 62; and that they did so with a class based invidious animus toward the plaintiff. In addition, Anderson alleges that the filing of the brief constituted suspension of laws and the unauthorized practice of law by the defendants. Anderson requests general and punitive damages against each defendant.

The defendants have filed a motion to dis-for failure to state a claim, Fed R. Civ. P. 12(b)(6) and for lack of jurisdiction.

DISCUSSION

A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, ___ U.S. _ , 104 S. Ct. 2229, 2233, (1984). Courts hold pro se complaints to less stringent standards than pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520.

Anderson asserts claims under 42 U.S.C. Secs. 1981, 1982, 1983, 1985 and 1986. Sections 1981 and 1982 deal with racial discrimination. Anderson has alleged no facts to show such discrimination. Section 1985(1) deals exclusively with federal officers, Canlis v San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711, 717 (9th Cir. 1981), and is not applicable to this action. To state a claim under sections 1985(2) and (3), the complaint must allege facts showing invidi-

ously

discrimnatory class-based animus. A & A Concrete v. White Mountain Apache Tribe, 676 F.2d 1330, 1333 (9th Cir. 1982) No such facts appear in this complaint. Without a valid claim for relief under section 1985, there can be no cause of action under section 1986. Trerice v. Pederson, No. 84-5789, slip op. at 10 (9th Cir. Aug. 28, 2985); Mollnow v. Carlton, 716 F.2d 627, 632 (9th Cir. 1983, cert. denied, __ U.S. __, 104 S. Ct. 1595, (1984).

The elements necessary to establish a claim for damages under 42 U.S.C. Sec 1983 are 1) the conduct complained of was engaged in under color of state law, and 2) the conduct subjected the plaintiff to the deprivation of rights, privileges and immunities secured by the Constitution. Williams v. Gorton, 529 F.2d 668, 670 (9th Cir. 1976) Anderson alleges that "the actions of the four defendants. . . are outside their regular duties," Complaint para 6, and that the defendants "have no authority

to meddle in civil cases, as that is outside their authority." Complaint, para 70. However the Attorney General is authorized by statute

> to (a)ppear, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court when requested by any state officer, board or commission when, in his discretion, the same may be necessary or advisable to protect the interests of the state. Or. Rev. Stat. Sec. 180.060 (1)(d).

Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of state law." United States v. Classic, 313 U.S. 299, 326 (1941). Although the complaint alleges that the defendants acted outside their regular duties, the court will construe it to have alleged that the defendants acted under color of state law.

However, the factual allegations of the complaint do not show how the defendant' conduct in filing a brief on Justice Peterson's behalf in the United States Supreme Court could have prejudiced any of Anderson's

Constitutional rights. Anderson's conclusory allegations that he was conspired against and deprived of due process and equal protection do not suffice to state a claim under section 1983.

The remainder of Anderson's claims are for violation of the Oregon Constitution & Oregon law. A claim that state officials violated state law in carrying out their official responsibilities is a claim against the state that is barred by the Eleventh Amendment. Pennhurst State School & Hospital v. Halderman, ___ U.S. ___, 104 S. Ct. 900 919 (1984).

IT IS ORDERED that the defendants' motion to dismiss is allowed.

Dated this 15th day of October 1985.

(S). Edward Leavy
U.S. District Judge.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON

HENRY ANDERSON, Plaintiff, VS DAVE FROHNMAYER, WILLIAM F. GARY, JAMES E. MOUNTAIN, jr., THOMAS H. DENNEY, Defendants.	Civil No. 85-458 NOTICE OF APPEAL

Notice is hereby given that Henry Anderson, plaintiff above named, hereby appeals to the United States Court of Appeals from the order of dismissal entered in this action on October 15, 1985.

By Henry Anderson
Henry Anderson/Plaintiff.

(Filing fees attached)

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HENRY ANDERSON, Plaintiff-Appellant, V DAVE FROHNMAYER, WILLIAM F. GARY, JAMES E. MOUNTAIN, jr., THOMAS H. DENNEY, Defendants-Appellees.	No. 85-4344 D.C. No. C85-458-LE MEMORANDUM

FILED

FEB 24 1987

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court for the District of Oregon

Before: HUG, SCHROEDER, and NORRIS Circuit Judges.

Henry Anderson appeals the dismissal with prejudice of his action against Oregon Attorney General Dave Frohnmayer and other officials of the Oregon State Attorney General's office. The action was based on 42 U.S.C. Secs. 1981, 1982, 1983, 1985 and 1986 (1982), the United States Constitution, the Oregon Constitution, & Oregon Law. The district court dismissed the claims under 42 U.S.C. Secs. 1981, 1982, 1983, 1985, and 1986 for failure to state

a claim. The claims under the Oregon Constitution and Oregon Law were dismissed as barred by the Eleventh Amendment. We affirm.

Anderson's claims allege that the defendants unconstitutionally interfered with his action for a writ of mandamus in the United States Supreme Court by filing a brief opposing the writ. The Attorney General's Office filed the brief at the request of Chief Justice Edwin Peterson of the Oregon Supreme Court, against whom the writ was directed.

A dismissal for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) is a ruling on a question of law and as such is reviewed denovo. Gibson v. United States, 781 F.2d 1334, (9th Cir. 1986), cert. den, 55 U.S.L.W. 3494 (1987) A pro se civil rights complaint is to be liberally construed, and "should not be dismissed unless it appears certain that the plaintiff

can prove no set of facts which would entitle him or her to relief." Haddock v. Board of Dental Examiners, 777 F.2d 462, 464 (9th Cir. 1985). The court reviews de novo a district court's dismissal for lack of subject matter jurisdiction. Clayton v. Republic Airlines, Inc. 716 F.2d 729, 730 (9th Cir. 1983).

Anderson asserts claims under 42 U.S.C. Secs. 1981, 1982, 1983, 1985, and 1986. Sections 1981 and 1982 deal with racial discrimination; therefore, racially-based animus must be alleged in the complaint. Since Anderson failed to do so, his complaint was properly dismissed. Glover v. Tower, 700 F.2d 556, 558 (9th Cir. 1983), aff'd, 467 U.S. 914 (1984).

To state a claim under section 1983, a plaintiff must allege that: (1) the defendants were acting under color of state law, and (2) the defendants deprived the plaintiff of a right, privilege, or immunity

secured by the Constitution or Laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981) overruled on other grounds, Daniels v. Williams, 106 S. Ct. 662, 665, (1986). If the defendants are being sued in their individual capacities, they are entitled to qualified immunity for actions taken in good faith. Butz v Economou, 438 U.S. 478, 496-98 (1978). Anderson has made nothing more than conclusory allegations of bad faith. If the defendants are being sued in their official capacities, then the requirement of acting under the color of state law has clearly been met. However, Anderson's Amended Complaint fails to allege any right of which he was deprived. The Amended Complaint does not indicate how the Attorney General's Office, by filing a brief on behalf of Chief Justice Peterson in the U.S. Supreme Court, has deprived Anderson of any right or privilege secured by the Laws or Constitution of the United States. Since

Sup. Ct. R. 27.2(b) allows the filing of a brief by a respondent in a mandamus and Or. Rev. Stat. Ann. Sec 180.060(1)(d)(Butterworth 1985) authorizes the Oregon Attorney General to file the brief, Anderson has no right to have the Attorney General's Office refrain from filing such a brief.

Section 1985(1) deals exclusively with federal officials, Canlis v. San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711, 717, (9th Cir.) cert. denied, 454 U.S. 967 (1981), and is therefore not applicable to this action against state officials.

To state a claim under the first clause of section 1985(2), a complaint must allege facts showing a conspiracy to deter, by force, intimidation, or threat, parties, witnesses, or jurors in federal courts. Miller v. Glen & Helen Aircraft, Inc. 777 F.2d 496, 498 (9th Cir. 1985). Even if we were to accept Anderson's allegations of a conspiracy, filing a brief in the United

States Supreme Court does not involve the use of force, threat, or intimidation and therefore no cause of action has been stated.

To state a claim under the second clause of section 1985(2) or under section 1985(3) the complaint must allege facts showing invidiously discrimnatory class-based animus. Glover, 700 F.2d at 558; A & A Concrete Inc. v. White Mountain Apache Tribe, 676 F.2d 1330, 1333 (9th Cir. 1982). No such facts are included in Anderson's amended complaint.

There can be no cause of action under section 1986 without a valid claim for relief under section 1985. Trerice v. Pedersen, 769 F.2d 1398, 1403 (9th Cir. 1985). Since Anderson has not alleged a valid claim under section 1985, he has no cause of action under section 1986.

The remainder of Anderson's claims are for violations of the Oregon Constitution & Oregon law. The Eleventh Amendment bars

federal suits against state officials based on state law violations. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 106 (1984).

The judgment of the district court is therefore AFFIRMED. **

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by the 9th Cir. R. 21.

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON,	) No. 85-4344
Plaintiff-Appellant,	) D.C. No. C85-458-LE
V	)
DAVE FROHNMAYER, WILLIAM F. GARY, JAMES E. MOUNTAIN, jr., THOMAS H. DENNEY,	) PETITION for ENBANC REHEARING IN THE CASE.
Defendants-Appellees.	)

INTRODUCTION

APPELLANT'S PETITION FOR AN EN BANC RE-HEARING. FRAP RULE 40

In appellant's judgment some material facts & laws have been overlooked by the Appeals Court in its ruling, as shown herein.

A rehearing en banc would be justified to remove the obvious conflicts of the Appeals Court ruling with the published rulings of the United States Supreme Court.

1. The United States Constitution Article III, Section 1 says "The judicial power of the United States, shall be vested in one Supreme Court."

The Court of Appeals has violated that Article III, with the Court of Appeals ignoring, overruling & repudiating specific Supreme Court rulings cited by appellant in his Appeals Brief.

The Appeals Court in violation of the Fifth Amendment to the United States Constitution, has discriminated against appellant & deprived appellant of his Fifth Amendment rights to Due Process of Law with the Court's biased ruling distorting and misrepresenting material facts cited by appellant in his brief.

The Court of Appeals has discriminated against appellant & deprived appellant of his Constitutional rights to Due Process of Law, with the Appeals Court ignoring the mandatory rules of the Federal Evidence Rules.

The Court of Appeals shows bias in its ruling, with the Court ignoring the Federal Evidence Rules & the facts in the case

and ruling contrary to the facts & evidence. A. The United States Supreme Court will be astonished & very indignant to find the Court is no longer "SUPREME", due to the usurpation of power by members of the 9th Circuit Court of Appeals, which has arrogantly, in bad faith and contrary to the United States Constitution Article III, usurped the power of the U.S. Supreme Court by declaring the Court of Appeals ruling takes precedence over the rulings of the Supreme Court.

Kush v. Rutledge-- cited by appellant on pages 24 & 27 of appellant's brief is repeated here.

KUSH V. RUTLEDGE (1983) 103 S. Ct. 1483. "No allegation of racial or class-based invidiously discriminatory animus were required to establish cause of action under provision of this section (42 USC 1985) barring conspiracies to interfere with administration of justice in Federal Court."

The Court of Appeals has cited Glover,

700 F.2d at 558,& A & A Concrete, Inc., v. White Mountain Apache Tribe, 676 F.2d 1330, 1333 (9th Cir. 1982), its own biased misrulings as law.

ABUSE OF POWER-- Use of one who possesses it in a manner contrary to law. Improper use of power, distinguished from usurpation of power which presupposes exercise of power not vested in the offender. Swenson v. Cahoon 111 Fla. 788, 152 So. 203, 204.

AVERAGE MAN TEST-- Used to determine bias of prospective judge who asserts that he is without prejudice but who is so connected with case that ordinary man would be biased without recognition of his prejudice. U.S. v. Haynes, C.A. Conn. 398 F.2d 980, 984.

CONTEMPT OF COURT, PREJUDICE

B. The Ninth Circuit Court of Appeals has made its ruling in this civil case. It is a biased ruling, distorts the facts, & ignores the laws & ignores western U.S. history.

The court failed to obey & use the Federal Evidence Laws as given in the handbook of Federal Evidence ; by Graham.

In the addendum to appellant's appeals brief, 4 copies of the notarized oaths of office of the four defendants were included; pages A1, A2, A3, and A4.

Those "OATHS OF OFFICE" are judicial & evidentiary admissions and cannot be excused or alibied away.

Each of those "OATHS OF OFFICE" has the affiant, swearing to obey the U.S. Constitution & laws, which they have not done, that OATH OF OFFICE, also includes obeying the U.S. Supreme Court's rulings.

The XIII Amendment was passed in the year 1865 & the XIV Amendment was passed in the year 1868. Those two Amendments nullified & superseded many other laws & court rulings. The four defendant's tried to swindle the federal district court with the four defendant's citing & using laws that were

made void by the passage of the XIII & XIV Amendments to the U.S. Constitution.

It is outright prejudice for the Appeals Court to ignore appellant's claims & evidence about the illegal use of laws by defendant's, laws no longer in existance.

MISREPRESENTATION OF FACT AND LAW

The Court of Appeals panel ignored the facts it is not the filing of papers in court that creates the harm, it is the false presentation of supposed facts to the court that creates the harm & brings into being the conspiracy & the impeding, obstruction, hindering and defeating of justice in the courts.

The last part of 42 USC 1985(2) does not require any allegation of the use of force, threat or intimidation in the execution of the conspiracy.

With that conspiracy came the result of denying appellant his U.S. Constitutional rights to Equal Protection of the Laws & due process of law.

BEST AVAILABLE COPY

The U.S. Supreme Court in Beacon Theatres v. Westover 359 U.S. 500, 511, said, "the right to grant mandamus to require jury trial where it has been improperly denied is settled."

The four defendant's have arrogantly acted as if they were above the United States Laws and the Supreme Court rulings.

The four defendant's false sworn promises made in their oaths of office, prove that to be a lie.

Circuit judges HUG, SCHROEDER & NORRIS on page 2 of their decision, first para., last sentence thereof, mistate & misrepresent fact when the judges stated, the attorney general's office filed the brief at the request of Chief Justice Edwin Peterson,. . . The above judges ignored the express words & decision of appellant's Exhibit "5", which is a copy of a letter from respondent Peterson, which states, "I will make no appearance to the pettion

unless requested to do so by the Court."

It is elementary & obvious that 2 contradictory statements on the same subject cannot both be right. When the subject is the doing of an act, & the statement by the potential doer declines to do the act; the contradicting party has no authority to take control & regardless of the respondent's wishes mismanage the actions that were supposed to have been done.

The court of appeals panel has discriminated against respondent Peterson & in bad faith contrary to Federal Law, discriminated against the members of the U.S. Supreme Court, when the appeals panel failed to give effect to prior judgments or mandates of the Supreme Court cited by appellant in his brief and other court papers.

Respondent Peterson, never withdrew or repudiated his letter of non-appearance to the Supreme Court. That letter is the official policy set by the person who could &

did set the policy.

The appeals panel also failed to give effect to prior mandates of the Supreme Court cited by appellant, in his brief.

CONCLUSION

Due to the extensive mistatements of facts and laws in the case; by the court of appeals panel; appellant suggests that a rehearing be held in this appeal. It is an affront to ordinary intelligence to read the United States Laws & then the deliberate misrepresentation of the laws, by the appeals panel in its biased decision. Those OBVIOUS CONTRADICTIONS explain why the panel does not want publication of their verbal crime.

The appeals panel is ashamed of their deliberate mistatements of law & fact & their infliction of contempt & indignity upon members of the United States Supreme Court.

March 5, 1987.

By Henry Anderson
Henry Anderson-Appellant

APPENDIX E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON,	)	No. 85-4344
	)	
Plaintiff-Appellant,	)	D.C. NO.
	)	C85-458-LE
V	)	
	)	ORDER
DAVE FROHNMAYER, WILLIAM F. GARY, JAMES E. MOUNTAIN, jr., THOMAS H. DENNY,	)	F I L E D
	)	APR. 10 1987
Defendants-Appellees.	)	

Appeal from the United States District Court for the District of Oregon.

Before: HUG, SCHROEDER, and NORRIS, Circuit Judges.

The panel as constituted in the above case has voted unanimously to reject the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing en banc is rejected.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HENRY ANDERSON, Plaintiff-Appellant, V DAVE FROHNMAYER, WILLIAM F. GARY. JAMES E. MOUNTAIN, jr., THOMAS H. DENNEY, Defendants-Appellees.	Civil No. 85-4344 NOTICE OF APPEAL F I L E D APR. 14 1987

Plaintiff-Appellant, HENRY ANDERSON gives NOTICE OF APPEAL from the MEMORANDUM decision entered by HUG. SCHROEDER. and NORRIS, circuit judges, denying the authority of the UNITED STATES SUPREME COURT rulings as being binding upon judges of the Ninth Circuit Court of Appeals; the judges memorandum ruling being dated February 24, 1987, and their ORDER of April 10, 1987 in the above titled case.

Jurisdiction of the appeal is by way of 28 U.S.C. 1252, and 28 U.S.C. 1254.

Service was made on defense counsel on April 13, 1987.

Dated April 13, 1987. By: Henry Anderson
Henry Anderson
Appellant

CERTIFICATE OF SERVICE

I certify that I served copies of the foregoing Jurisdictional Statement in the civil case upon counsel for the Appellees by mailing them in the United States mail postage prepaid, addressed as follows:

Linda Devries Grimms
400 Justice Building
Salem, Oregon , 97310

Mailed on May 5, 1987.

Henry Anderson
Henry Anderson
Appellant, Pro se